

REMARKS

By this amendment, claims 1, 2, 8, 16, 17 and 55 are currently amended, claims 3, 7 and 9 remain as previously presented, claims 4-6, 10-15, 18-30 and 56-58 have been cancelled, and claims 31-54 remain withdrawn. No new claims have been added. Hence, claims 1-3, 7-9, 16, 17, and 55 remain currently pending.

1. **Summary of Record of Interview**

During a telephonic interview conducted with Examiners Pass and Kalinowski on 23 November 2004, the undersigned attorney discussed the pending rejections to the claims presented prior to this Amendment and Response, and in light of the prior art references, specifically those referred to as the "Spiro Patent" and the "Bitran Paper." No agreement was reached with regard to specific amendments or arguments that would overcome the pending rejections. Applicant was invited to file a Request for Continued Examination along with an Amendment and Response to continue prosecution of the present application. Applicant hereby submits the present Amendment and Response for consideration and thanks the Examiners for their consideration during the telephonic interview.

2. **Response to Claim Rejections under 35 U.S.C. § 112**

Claims 4 and 58 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

By this Amendment, claims 4 and 48 have been cancelled. Therefore, it is respectfully submitted that the rejections of claim 4 and 58 under 35 U.S.C. § 112 have been rendered moot.

3. **Response to Claim Rejections under 35 U.S.C. § 101**

Claims 1-13, 18-30, and 56-57 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

By this amendment, claim 1 has been amended to recite “a computer-implemented method, executed in a first computer operated by an incentive administrator that is coupled over a computer network to a second computer operated by a payer and a third computer operated by a healthcare provider, of providing a monetary incentive payable to the healthcare provider upon completion of a course of treatment for a patient with a condition during an episode of care.” The preamble thus incorporates substantially the same language as present in canceled claim 14, which was not rejected under 35 U.S.C. § 101 in the currently pending office action. It is thus respectfully submitted that claim 1 and its remaining dependent claims 2, 3, 7-9, 16, and 17 are directed to statutory subject matter in light of this amendment.

Claims 4-6, 10-13, 18-30, and 56-57 have been cancelled. Therefore, it is respectfully submitted that the instant rejection of these claim under 35 U.S.C. § 101 have been rendered moot.

4. Response to Claim Rejections under 35 U.S.C. § 103

Claims 1-16, 18-24, 26-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spiro, U.S. Patent Number 5,819,228 (hereinafter “the Spiro patent”) in view of Bitran, et al, Provider Incentives and Productive Efficiency in Government Health Services document, September , 1992. URL: <http://www.phrplus.org/Pubs/hfsmar1.pdf> (hereinafter “Bitran”).

The Spiro patent is directed to a healthcare payment system that uses an intensity adjustment factor applied to healthcare provider episodes of care. The Spiro patent describes a system in which payments are provided to imaging providers (radiologists) based upon an episode of care payment methodology. A financial incentive plan is utilized in which the radiologists are encouraged to increase their interaction with referring physicians to select the best imaging studies, based upon the identified clinical conditions, to appropriately diagnose the patient. The members of a health plan fund a diagnostic imaging provider account through fixed monthly payments. The radiologist is credited with an episode of care for all imaging studies performed on a given member per period of time (e.g., two months). An intensity adjustment factor based upon the type of imaging studies performed is multiplied by

the number of episodes of care. Each provider's percentage of the total intensity adjusted episode of care is calculated monthly, and the provider is paid from the funds. Radiologists are awarded as the number of studies per episode of care declines and as the number of episodes for a given population decreases.

The Bitran paper is a field work study that looks at the causes and inefficiencies in government-run healthcare systems in third world countries. The Bitran paper discusses the withholding of a percentage of fees from a physician until year-end, and the payment of these fees to those physicians who meet certain performance goals, and the payment of bonuses to physicians who meet certain efficiency goals, such reduction in average stay periods.

By this amendment, claim 1 has been amended to recite:

1. (Currently Amended) A computer-implemented method, executed in a first computer operated by an incentive administrator that is coupled over a computer network to a second computer operated by a payer and a third computer operated by a healthcare provider, of providing a monetary incentive payable to the healthcare provider upon completion of a course of treatment for a patient with a condition during an episode of care, the method comprising the steps of:

- receiving over the computer network from the payer a diagnosis of the patient performed by the healthcare provider and provided by the healthcare provider to the payer;

- creating an episode of care based upon the diagnosis of the healthcare provider and a decided course of treatment;

- creating a baseline value related to treatment of the condition;

- associating the baseline value to the episode of care;

- summing a plurality of claims processed during the episode of care of the patient for the condition to obtain a total treatment cost; and

- determining if the total treatment cost is less than the baseline value, thus resulting in a cost savings;

- causing a portion of the cost savings to be sent to the healthcare provider in the form of the monetary incentive; and

- determining a portion of the cost savings to be retained by the incentive administrator.

Claim 1, as amended, thus recites a method performed by an independent incentive administrator who is coupled over a network to a healthcare provider and a payer. The claimed method recites steps in which a monetary incentive is calculated by the incentive administrator to be paid by a payer to a healthcare provider who performs a diagnosis and

decides a course of treatment for a patient with a condition. The monetary incentive is derived from any cost savings realized if the total treatment cost is less than a baseline value created by the incentive administrator, and a portion of the cost savings is retained by the incentive administrator.

It is respectfully submitted that the combination of Spiro and Bitran does not teach or suggest the method of determining and causing the payment of an incentive to a healthcare provider in a system that comprises separate healthcare provider, payer, and incentive administrator entities, as claimed in amended claim 1. Spiro does not teach or suggest the reception of diagnostic information from a healthcare provider through a payer, and the creation of episodes of care and baseline values to determine the presence of any cost savings from which a monetary incentive is paid to the healthcare provider with a portion retained by the incentive administrator. The Bitran paper adds no teaching to Spiro that renders obvious the determination and distribution of incentives based upon care for individual patients, as claimed in claim 1. Although Bitran describes centralized health systems in which health centers are established and operated as non-profit enterprises to oversee the finances and provision of medical services, Bitran does not teach or suggest the establishment of a separate incentive administrator that determines total cost values and resultant savings, and causes incentive payments to be distributed to providing physicians, as claimed in the present application. Therefore, it is respectfully submitted that claim 1, as amended is not rendered obvious under 35 U.S.C. § 103(a) by the Spiro patent.

Claims 2, 3, 7-9, 16, and 17 depend from claim 1, and therefore, for the same reasons provided with respect to claim 1, it is respectfully submitted that these claims are not rendered obvious by the cited combination of references.

Claims 4-6, 10-15, 18-30 and 56-58 have been cancelled. Therefore, it is respectfully submitted that the instant rejection of these claims under 35 U.S.C. § 103 has been rendered moot.

Independent apparatus claim 55 has been amended to recite elements similar to those of amended claim 1. Therefore, for the same reasons provided with respect to claim 1, it is respectfully submitted that claim 55 is allowable over the cited combination of references.

Applicants respectfully request that the above described amendments be made part of the official record in the present application, and respectfully submit that support for the claim amendments and new claims is present in the specification, claims, and drawings as originally filed, and that no new matter has been added.

If there are any shortages, the Examiner is authorized to charge our Deposit Account Number 04-0822.

Respectfully submitted,
DERGOSITS & NOAH LLP

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By: 

Geoffrey T. Staniford
Registration No. 43,151

Four Embarcadero Center, Suite 1450
San Francisco, CA 94111
(415) 705-6377 (telephone)
(415) 705-6383 (facsimile)